

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ENT INT’L REALTY CORP., H.P.S.O.N.Y., INC.,
N.Y.A.H., INC., R.C.F.H.P., INC., on behalf of themselves
and all others similarly situated,

Plaintiffs,

ORDER

-against-

20-cv-4277 (PKC)

ANDREW CUOMO, in his personal and official capacity as
Governor of the State of New York, BILL De BLASIO
in his personal and official capacity as Mayor of New York City
and THE NEW YORK CITY DEPARTMENT OF FINANCE,

Defendants.
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CASTEL, U.S.D.J.

Plaintiffs have submitted a proposed “Emergency Order to Show Cause for Preliminary Injunction and Temporary Restraining Order.” Specifically, plaintiffs seek a temporary restraining order and preliminary injunction against (1) enforcement of the New York State Governor’s Executive Orders 202.8 and 202.28 which had imposed moratoria on evictions;¹ (2) demanding property taxes on July 1, 2020; and (3) imposing penalty and late fees on taxes that are due on July 1, 2020.

On June 29, 2020 Chief Judge McMahon issued a 37-page Order ruling on a challenge to Executive Order 202.28 under the Contracts Clause, the Takings Clause, the Petition Clause and the Due Process Clause of the United States Constitution brought by owners of residential rental properties and condominium units rented to tenants. Elmsford Apartment

¹ Executive Order 202.8 was the first moratorium. Executive Order 202.28 extended the first moratorium and suspended sections 7-103, 7-107 and 7-108 of the General Obligations Law relating to security deposits.

Assocs., LLC v. Cuomo, 20-cv-4062 (CM) (Doc. 30). Chief Judge McMahon denied plaintiffs' motion for summary judgment and granted defendant's motion for summary judgment. For substantially the reasons set forth in the June 29 Order in Elmsford, this Court declines to grant a temporary restraining order against enforcement of Executive Order 202.28 or its predecessor Executive Order 202.8.

With respect to so much of the proposed order to show cause that would enjoin the collection of property taxes or imposition of penalties for failure to pay property taxes, the relief sought would appear to run afoul of the Tax Injunction Act ("TIA"). 28 U.S.C. § 1341 ("The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."). The Second Circuit has held that New York provides a "plain, speedy and efficient remedy" for constitutional challenges. Long Island Lighting Co. v. Town of Brookhaven, 889 F.2d 428, 431 (2d Cir. 1989). Accordingly, the balance of the relief sought by way of a temporary restraining order is also denied.²

Nevertheless, the Court will hear plaintiffs' motion for a preliminary injunction as follows:

1. By July 17, 2020, plaintiffs may supplement their motion for a preliminary injunction, explaining why this Court ought not follow Elmsford.
2. By August 7, 2020, defendants may oppose plaintiffs' motions for a preliminary injunction and file motions to dismiss as outlined in their pre-motion letters.
3. By August 28, 2020, plaintiffs may reply with respect to its motion for a preliminary injunction and respond to the motion to dismiss.

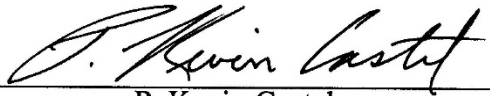
² Plaintiffs assert an Equal Protection Clause challenge to a tax relief program open only to owners with one to three family homes and condos. The injunctive relief sought would run afoul of the TIA.

4. By September 8, 2020, defendants may reply on their motion to dismiss.

The Court will schedule a hearing after all briefing has been submitted. The plaintiffs may serve process on defendants in the manner prescribed by New York law for serving a summons or like process on the Governor, Mayor and New York City Department of Finance.

The July 27, 2020 conference is VACATED. The Clerk shall terminate these motions. (Docs. 16, 20, 21).

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
June 30, 2020